

1 The Honorable Marsha J. Pechman  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SUSAN RYNEARSON, individually and on  
behalf of a class of similarly situated  
individuals,

No. C 09-393 MJP

Plaintiff,

**DECLARATION OF JAY EDELSON  
REGARDING FEES ASSOCIATED  
WITH MOTRICITY'S SECOND  
REMOVAL**

v.

MOTRICITY, INC.,

Defendant.

**DECLARATION OF ATTORNEY JAY EDELSON**

I, Jay Edelson, hereby declare as follows:

1. I am a managing member of the law firm of KamberEdelson, LLC.
2. I am over the age of 18 and could competently testify if called to do so.
3. I am submitting this declaration in support of KamberEdelson's application for an award of attorneys' fees and expenses in connection with services rendered in this litigation, pursuant to this Court's June 15, 2009, Order granting Plaintiff all reasonable attorneys' fees and costs relating to Defendant Motricity, Inc.'s ("Motricity") second removal. The fees and expenses set forth in this declaration have not been the subject of any prior request, or prior award.
4. A true and accurate copy of the KamberEdelson firm resume is attached to this declaration as Exhibit 1.
5. KamberEdelson maintains a time keeping protocol, which the attorneys followed in this matter. All KamberEdelson attorneys are required to keep contemporaneous time records. Unrelated tasks must be separately accounted for and time entries are required to be sufficiently detailed so that an independent auditor can understand the type of work performed as described in each time entry. If work is performed for more than one case, our attorneys are instructed to divide the time amongst the respective cases. Our attorneys have the discretion to not record time spent in conferences, on short phone calls, reviewing or sending emails, etc.
6. KamberEdelson's billable rates are incorporated in the chart below. As a firm policy, we do not include time spent on projects later deemed unnecessary or excessive. We followed that rule in this case. Detailed time records are attached as Exhibit 2.

Attorney	Hours Expended	Rate	Total
M. McGuire	1.6	\$475	\$760
S. Lezell	1.7	\$360	\$612
R. Andrews	3.3	\$360	\$1,188
R. Balabanian	1.0	\$360	\$360
M. Aschenbrener	54.8	\$315	\$17,262
Law Clerks	11.1	\$210	\$2,331
<b>Total:</b>	<b>73.5</b>		<b>\$22,513</b>

7. Based on my experience in plaintiffs' class action litigation (in addition to three years doing complex commercial litigation and class action defense) and my knowledge of the billing rates of other firms in the area, I believe that KamberEdelson's rates are equal to, or less than, the average billable rates for attorneys of similar backgrounds and experience. In addition, other courts have reviewed and found that KamberEdelson's billable rates are reasonable. These rates are also the same rates we quote to prospective clients. Other than for pro bono work, we do not provide discounted rates.

8. The activity in this case relevant to Motricity's second removal includes: thorough investigation of the facts and applicable laws; drafting a motion to remand with supporting memoranda; drafting a reply in support of the motion to remand, including supporting memoranda; drafting a motion to reassign and for sanctions; replying to said motion for sanctions; conducting a Rule 26(f) conference; and filing a joint discovery plan.

9. During this case, my law firm also incurred costs of \$450. This amount includes charges for three pro hac vice admissions for Jay Edelson, Myles McGuire, and Michael Aschenbrener. My firm does not generally charge for small copying

1 charges, long distance telephone calls, Westlaw research charges, or other  
2 incidental costs; accordingly, these amounts are not included.

3 10. Also, our local counsel, Cliff Cantor of the Law Offices of Clifford A. Cantor,  
4 incurred fees of \$15,660 based on 35.35 hours of work at the rate of \$450 per  
5 hour. Detailed time records for Mr. Cantor are attached as Exhibit 3. His firm's  
6 resume is attached as Exhibit 4.

7 11. While the combined fees (exclusive of costs) in this case equal \$38,173, we  
8 hereby ask the Court to award us exactly half that amount: \$19,086.50.

9 12. My law firm also acts as counsel for another putative class action against  
10 Motricity in the Northern District of California before Judge Patel. *Walker v.*  
11 *Motricity*, 09-cv-1316 MHP. *Walker* is a similar case containing similar claims.  
12 Motricity also removed the *Walker* matter a second time based on the same  
13 evidence as in this case. Just as here, Judge Patel awarded Plaintiff fees and costs  
14 associated with litigating the second removal. But because of similarities in the  
15 cases, our request for fees in *Walker* is much lower (total time: \$15,422.50;  
16 request for half that amount, \$7,711.25). In other words, we are not requesting  
17 duplicate fees from each court and our request in *Walker* takes into account the  
18 efficiencies involved in essentially litigating this matter twice.

19 13. I declare under penalty of perjury that the foregoing is true and correct.  
20 28 U.S.C. § 1746.

21 Dated this the 2nd day of July, 2009.

s/ Jay Edelson  
Jay Edelson

## **Proof of Service**

The undersigned certifies that on July 2, 2009, he caused this document and firm resumes of KamberEdelson, LLC and the Law Offices of Clifford A. Cantor, and billing records for both firms to be electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of filing to counsel of record for each party, listed below:

Clifford A. Cantor  
Jay Edelson  
Myles P. McGuire  
Michael J. Aschenbrener  
Russell B. Morgan  
Scott K. Haynes  
Stellman Keehnel  
Russell B Wuehler

s/ Michael J. Aschenbrener  
Michael J. Aschenbrener